

Case: #19132

Investigator: Ikechukwu Ekeke

Complaint Received: June 12, 2019

Complainant: Ronald Spikes

Complaint Summary:

Per CPD: Mr. Ronald Spikes alleged that on June 10, 2019, Officer Michael Smith improperly stopped him, used profanity after approaching his vehicle, and searched the vehicle without probable cause.

Persons Involved:

Officer Michael Smith, M/W/31, #P0071 (CPD, Involved)
Officer Gregory Harmon, M/W/30, #P0047 (CPD, Involved)
Ronald Spikes, M/B/32 (Citizen, Complainant)
Witness A, F/B/Unknown (Citizen, Witness)

Evidence Reviewed:

CPD Records:
IIS Resolution
Computer Aided Dispatch (CAD)
Body-Worn Camera (BWC) of Officers Smith and Harmon
Statements by the officers, complainant, and witness
Hamilton County Clerk Of Courts

Authorities:

CPD Procedure 12.554 Investigatory Stops
CPD Procedure §12.205 Traffic Enforcement
CPD Manual of Rules and Regulations § 1.06
CPD Training Bulletin #2001-1 (in part) Verbal stunning
State v. Wilson, 1st Dist. Hamilton No. C-170408, 2018-Ohio-2377

Analysis:

Allegation 1: Improper Stop

Mr. Ronald Spikes (M/B/32) complained Officers Michael Smith (M/W/31) and Gregory Harmon (M/W/30) improperly stopped him and his passenger Witness A (F/B/Unknown). CPD Procedure §12.205 Traffic Enforcement authorizes officers “[t]o employ discretion as directed in borderline cases when: There is a reasonable possibility of human error in judgment on the part of either the police officer or the public... [t]ake appropriate enforcement action whenever a violation is detected, including provable violations determined as the result of accident investigations.” CPD Procedure § 12.554 Investigatory Stops provides that officers may forcibly stop and detain the citizen for a brief investigatory period when an officer has reasonable suspicion to believe the citizen is committing or has committed a crime. When interviewed, Officers Smith and Harmon

explained that the tint level of the vehicle driven by Mr. Spikes was the reason for the stop. Mr. Spikes was charged with ORC 4513.241 TINTED WINDOW VIOLATION. According to the BWC footage, Officer Smith explained to Mr. Spikes that he failed to drive at a green light and was on his phone, which gave Officer Smith the basis to pull Mr. Spikes over. Additionally, according to BWC, Officer Smith spoke to Mr. Spikes and explained a mandate to “stop anything and everybody... [but] we only cited you with the little things that we had to.” Mr. Spike was charged for Tinted Window Violation according to ORC 4513.241. BWC footage and Officer Smith’s statement provide an individual basis—sufficient though inconsistent—to find Officers Smith and Harmon did not improperly stop Mr. Spikes.

Allegation 2: Discourtesy

Mr. Spikes also complained that Officer Smith used profanity during the stop. CPD Manual of Rules and Regulations §1.06 requires that officers shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates. However, according to CPD training, coarse or profane language is sometimes permitted if it qualifies as “verbal stunning.” According to CPD Training Bulletin #2001-1, “[v]erbal stunning is a technique utilizing voice volume, inflection, and language to control a person who is not responding to voice commands.” According to the BWC footage in this case, after detaining Mr. Spikes and escorting him into the cruiser Officer Smith attempted to speak to Mr. Spikes, whereby Mr. Spikes responded, “do what you gotta do.” BWC footage then captured what sounds like Officer Smith in a lower volume state, “sit in the [expletive] back seat.” When asked during the interview, Officer Smith did not inform CCA of this statement of his profanity during the stop. Though Mr. Spikes was not resisting or non-compliant in response to voice commands from the police aside from his questioning the basis of his arrest, Officer Smith responded in this manner. CCA determined the coarse language is a violation of CPD’s Manual of Rules and Regulations and not in accordance with CPD’s training bulletin for verbal stunning.

Additionally, BWC footage captured Officer Smith repeatedly ordering Witness A to stand in another area away from the vehicle. As Witness A began walking toward the area that Officer Smith ordered her towards, BWC captured Officer Smith stating, “sitting here being nice to your [expletive]. You please step out of the car.” This use of profanity was not to gain compliance. Therefore, CCA finds that this use of profanity is not in compliance with CPD’s training.

Allegation 3: Improper Search

Officer Smith searched each passenger seat area of the vehicle. Mr. Spikes alleged that the search occurred because Officer Smith felt that Mr. Spikes was being rude rather than because Officer Smith had probable cause to search. According to State v. Wilson, 1st Dist. Hamilton No. C-170408, 2018-Ohio-2377, an officer may search an automobile in reliance upon evidence “[1]plainly viewed, (2) the discovery of the evidence was inadvertent, and (3) its incriminating nature was immediately apparent.” Officers Harmon and Smith each stated they observed marijuana shake on the floorboard of the driver’s seat. During his interview, Officer Smith provided CCA specific details that enable him to distinguish the marijuana shake from dirt or debris, such as:

“Marijuana balls up. It doesn’t look like grass or dirt. It’s green, and even when it’s crushed up, it still stays in little balls. It’s different. When a blade of grass is there, that’s different than a marijuana leaf or seed or anything like that. Even the stems don’t look like anything else but marijuana. It’s usually a stick with the marijuana buds on the end. It is very identifiable.”

BWC footage showed debris-like material on floorboards while Officer Smith searched the vehicle. In the presence of a warrantless search of Mr. Spike's vehicle supported by the plain-view of incriminating evidence, CCA determined Officer Smith did not improperly search Mr. Spike's vehicle.

Findings

Original Allegations

Officer Michael Smith

Improper Stop - The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

Discourtesy - The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **SUSTAINED**

Improper Search - The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

Officer Gregory Harmon


Improper Stop - The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**



Ikechukwu Ekeke, Investigator

12-29-2021

Date



Gabriel Davis, Director

12-29-2021

Date

Previous Contacts and Commendations:

Officer Michael Smith

Previous Contact with CCA

Officer Smith had four previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
18096	Excessive Force (Taser)	Sustained
18096	Excessive Force (Taken to Ground)	Not Sustained
18096	Improper Procedure (foot pursuit)	Exonerated
18096	Excessive Force (Taser)	Sustained
18096	Excessive Force (Taken to Ground)	Not Sustained
18070	Improper Search (Vehicle)	Exonerated
18070	Improper Stop (Vehicle)	Exonerated
18070	Discourtesy	Sustained
18070	Improper Search (Person)	Exonerated
18070	Improper Search (Person)	Exonerated
18070	Use of Force	Exonerated
17214	Improper Search (Vehicle)	Exonerated
17214	Improper Stop (Vehicle)	Exonerated
17101	Discourtesy	Sustained
17101	Improper Stop (Person)	Exonerated
17101	Excessive Force (Physical)	Unfounded
17101	Harassment	Not Sustained
17101	Improper Procedure (MVRR/DVR)	Sustained

Previous Contact with IIS

Officer Smith had one previous contact with IIS in the past three years.

Case Number	Allegation	Finding
18026	Discourtesy	Sustained

Officer Smith received one commendation in the past three years.

Date	Source of Commendation Received
03/13/2018	Civilian

Officer Gregory Harmon

Previous Contact with CCA

Officer Harmon had one previous contact with CCA in the past three years.

Case Number	Allegation	Finding
17101	Improper Procedure (MVR/DVR)	Sustained
17101	Improper Stop (Person)	Exonerated
17101	Harassment	Not Sustained

Previous Contact with IIS

CCA is unaware of any additional previous contact by Officer George Harmon with IIS.

Commendations

Officer Gregory Harmon received two commendations in the past three years.

Date	Source of Commendation Received
9/11/2016	CPD
5/10/2017	Civilian